

REMARKS

Claim Objections

The misnumbered claims 21-40 have been renumbered 13-22, respectively, as required by the Examiner.

The above amendments to claims 13-18, 22 and 23 correct the "informalities" noted by the Examiner, and overcome the objections to these claims.

Therefore, Applicant respectfully requests the Examiner to reconsider and withdraw the "claim objections".

Claim Rejections - 35 U.S.C. § 101 and 35 U.S.C. § 112

Applicant respectfully requests the Examiner to reconsider and withdraw these rejections of claims 13-22 in view of the above amendments to these claims. These claims have been amended to recite a "method" and to recite method steps.

Claim Rejections - 35 U.S.C. § 102

Applicant respectfully traverses the rejection of claims 13, 19-23 and 29-32 under 35 U.S.C. § 102(b) as being anticipated by Klun '521.

Such a rejection requires that Klun disclose, either expressly or inherently, each limitation of each of claims 13, 19-23 and 29-32, or in other words, that each of these claims be **readable** on Klun's disclosure. Applicant respectfully submits that clearly such is **not** the case here.

More specifically, Klun '521 discloses a measuring device, for determining the quality of oils or fats, comprising a measuring head on which is attached a sensor which measures the dielectric constant of the oil. The measuring head consists of a ceramic plate set in the open end of an attachment. The sensor is positioned on the ceramic plate. The sensor is a capacitive sensor comprising two essentially identical electrodes applied to the surface of the ceramic plate on its side facing the material to be measured. The other side of the ceramic plate comprises a second sensor having the same design but which does not make contact with the material to be measured.

Consequently, Klun '621 does **not** disclose, or even suggest, the claimed invention wherein **both sides of the electrodes of a sensor are immersed in the fluid/oil on either side of the plate of the electrodes such that the fluid/oil can flow passing through said plane.**

This claimed arrangement of the electrodes has the important advantage of eliminating the influence of the parasitic capacitance due to the ceramic substrate of the prior art when the measurement occurs, in particular at high temperatures at which the capacitance of the substrate becomes greater than the capacitance variations of the measuring electrodes themselves, while improving the circulation of the fluid/oil to be measured through the gap of the measuring capacitive elements.

Thus, notwithstanding the Examiner's assertion to the contrary (by the Examiner's reference to Klun '521 from column 5, line 44 to column 6, line 61), it is clear that claims 13, 19-23 and 29-34 are **not readable** on Klun '521 which is **incapable of anticipating** these claims.

Thus, Applicant respectfully requests the Examiner carefully to reconsider and to withdraw the rejection under 35 U.S.C. § 102(b).

Claim Rejections - 35 U.S.C. § 103

Applicant also respectfully **traverses** the rejection of claims 14-17 and 24-27 under 35 U.S.C. § 103(a) as being unpatentable over Klun '521 in view of Meitzler '556.

The basis for this **traversal** is that the combined teachings of Klun and Meitzler do not teach, or even suggest, **all the limitations** of claims 14-17 and 24-27 because, as explained above, and notwithstanding the Examiner's assertion to the **contrary**, Klun does **not "teach** all that is disclosed as discussed in the above rejection of claims 13, 19-23 and 29-32..."

Thus, the basis (reliance on Klun as a primary reference) of the rejection under 35 U.S.C. § 103(a) is **flawed**.

While Applicant agrees with the Examiner's statement that Klun does **not teach**, "A reference capacitive element (which is similar in type to that used as the measuring capacitive element)", and even assuming that Meitzler "teaches method and apparatus for sensing the condition of lubricating oil in an internal combustion engine comprising...", Applicant respectfully submits that this teaching is irrelevant, as the Klun/Meitzler combination **fails**, because of the above-noted deficiencies in Klun's disclosure, to teach or even suggest **all of the limitations** of the rejected claims 14-17 and 24-27.

Furthermore, even if Klun were modified by Meitzler as proposed by the Examiner, there would not be produced the subject matter of any of the claims 14-17 and 24-27, or subject matter which would have rendered these claims *prima facie* obvious.

Thus, Applicant must respectfully **disagree** with the following Examiner's statement (or equivalent) concluding each of the Examiner's holdings of obviousness:

*The modification of the primary references as discussed
above would result in the claimed feature.*

Thus, and for the reasons explained above, Applicant also respectfully requests the Examiner carefully to reconsider and to withdraw the rejection of claims 14-17 and 24-27 under 35 U.S.C. § 103(a).

Allowable Subject Matter

Applicant notes the allowability of claims 18 and 28 if they are amended to overcome the rejections under 35 U.S.C. § 101 and 35 U.S.C. § 112 and/or rewritten in independent form. The amendments have been made, but Applicant respectfully requests the Examiner to hold in **abeyance** the rewriting of claims 18 and 28 in independent form until the Examiner has had the opportunity to reconsider (and to allow) their respective parent claims.

Thus, Applicant respectfully submits that the application now is in condition for allowance with all of claims 13-23; however, if for any reason the Examiner feels that the application is not now in condition for allowance, the Examiner is respectfully requested to **call the undersigned attorney** to discuss any unresolved issues and to expedite the disposition of the application.

Applicant files concurrently herewith a Petition (with fee) for an Extension of Time of one month. Applicant hereby petitions for any extension of time which may be required to maintain the pendency of this application, and any required fee for such extension is to be

AMENDMENT UNDER 37 C.F.R. § 1.111
U.S. APPLN. NO. 10/542,636

charged to Deposit Account No. 19-4880. The Commissioner is also authorized to charge any additional fees under 37 C.F.R. § 1.16 and/or § 1.17 necessary to keep this application pending in the Patent and Trademark Office or credit any overpayment to said Deposit Account No. 19-4880.

Respectfully submitted,

/John H. Mion/
John H. Mion
Registration No. 18,879

SUGHRUE MION, PLLC
2100 Pennsylvania Avenue, N.W.
Washington, D.C. 20037-3213
(202) 663-7901

WASHINGTON OFFICE

23373

CUSTOMER NUMBER

Date: June 29, 2007